

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC#
DATE FILED: 12-5-12

PRO SE OFFICE

-----X
DAVID SELLERS,

Plaintiff,

12 Civ. 1577 (TPG) (FM)

-against-

AFFIRMATION

ROYAL BANK OF CANADA, RBC USA
HOLDCO CORPORATION, RBC CAPITAL
MARKETS CORPORATION, LLC,
AND JOHN DOES 1-5

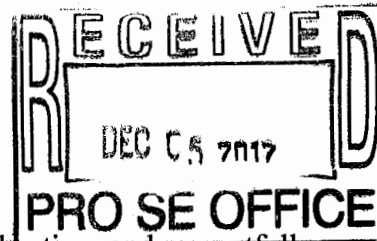
IN OPPOSITION TO

MOTION TO DISMISS

THE AMENDED COMPLAINT

Defendants
-----X

I, David Sellers, affirm under penalty of perjury that:



1. I, David Sellers, am the *Pro Se* Plaintiff in the above-titled action, and respectfully submit this Affirmation in opposition to the motion dated November 26, 2012, made by James P. Walsh, Jr. and Amanda M. Betman, Attorneys for the Defendants Royal Bank of Canada, RBC USA Holdco Corp., and RBC Capital Markets, LLC, asking the Court for the following relief: Dismissal of the Plaintiff's Amended Complaint.
2. I have personal knowledge of the facts which bear on this motion because I am the Plaintiff, acting *Pro Se*, and, as such, am the author of the Amended Complaint, which contains the statements of fact and claims.
3. The motion should be denied because (1) the arguments offered by the Defendants are based on an incomplete and therefore incorrect understanding of FRCP 4 and this Court's related Local Rules and procedures, as set forth in the PLAINTIFF'S MOTION TO

DISMISS THE AMENDED COMPLAINT, and (2) the Plaintiff's actions complied with FRCP 4(m) and the Court's rules and procedures implementing the law.

4. On March 5, 2012, Plaintiff filed the original complaint in this action (the "Complaint").
5. On June 22, 2012, Plaintiff filed an Amended Complaint (the "Amended Complaint").
6. On July 11, 2012 the Clerk of Court issued an Amended Summons in a Civil Action (the "July 11 Amended Summons"). A true and correct copy of the July 11, 2012 Amended Summons is attached as Exhibit 2, p.1/2.
7. On October 22, 2012 Plaintiff informed the *Pro Se* Office via a telephone conversation that the form of Defendants on the Amended Summons did not conform to the form of Defendants on the Amended Complaint.
8. On October 22, 2012 the Clerk of the Court issued a corrected Amended Summons in a Civil Action (the "October 22 Amended Summons"). A true and correct copy of the October 22, 2012 Amended Summons is attached as Exhibit 2, p. 2/2.
9. On October 26, Plaintiff informed the *Pro Se* Office via a telephone conversation that the form of the Defendants on the October 22 Amended Summons still did not conform to the Amended Complaint. Plaintiff was advised by the *Pro Se* Office in the same telephone conversation that the October 22 Amended Summons was acceptable for the purpose of service.
10. On November 5, 2012 a copy of (1) the Amended Complaint, and (2) the October 22, 2012 Amended Summons were served on each of the three Defendants, as they appear in the above-captioned case, at the Defendants' Legal Department, 200 Vesey Street, New York, New York 10281. True and corrected copies of the Affidavits of Service for each of the three Defendants are included in the attached Exhibit 4.

11. The time elapsed between July 11, 2012 and November 5, 2012 is 118 days (counting both July 11 and November 5).
12. On November 6, 2012 a courtesy copy of (1) the Amended Complaint, and (2) the October 22 Amended Summons were delivered to Todd W. Schnell, Vice President - Senior Associate General Counsel, RBC Capital Markets, RBC Plaza, 60 South Sixth Street, Minneapolis, Minnesota 55402-4422. A true and correct copy of the cover letter and USPS proof of delivery are attached as Exhibit 3.
13. On November 26, 2012 the following documents were delivered to the *Pro Se* Office: (1) the original October 22 Amended Summons, bearing the seal of the Clerk of the Court, (2) the original Affidavit of Service on November 5, 2012, Defendant ROYAL BANK OF CANADA, (3) the original Affidavit of Service on November 5, 2012, Defendant RBC USA HOLDCO, and (4) the original Affidavit of Service on November 5, 2012, Defendant RBC CAPITAL MARKETS CORPORATION, LLC. True and corrected copies of these four documents, plus the cover letter addressed to the Pro Se Office, plus USPS proof of delivery, are attached as Exhibit 4.

I declare under penalty of perjury that the foregoing is true and correct.

^{State of NJ}
^{County of Mercer SS.}
Dated: Hopewell, New Jersey

December 3, 2012

Sworn to before me this 3RD
day of December, 2012.

[Signature]
Notary Public

David Sellers, *Pro Se*

[Signature]

David Sellers
24 East Prospect Street
Hopewell, New Jersey 08525

609-466-1354 (land)
609-468-8437 (mobile)

sellers.david@yahoo.com

REGINA M. TOTHI
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 6/13/2016

EXHIBIT 1

(1 page total)

Exhibit 1 1/1

1:12-cv-01577-TPG Sellers v. The Royal Bank of Canada, et al

Thomas P. Griesa, presiding

Date filed: 03/05/2012

Date of last filing: 11/26/2012

History

Doc. No.	Dates	Description
<u>4</u>	Filed & Entered: 11/26/2012	☉ Notice of Appearance
<u>5</u>	Filed & Entered: 11/26/2012	☉ Notice of Appearance
<u>6</u>	Filed & Entered: 11/26/2012	☉ Rule 7.1 Corporate Disclosure Statement
<u>7</u>	Filed & Entered: 11/26/2012	☉ Motion to Dismiss
<u>8</u>	Filed & Entered: 11/26/2012	☉ Memorandum of Law in Support of Motion
<u>9</u>	Filed & Entered: 11/26/2012	☉ Declaration in Support of Motion
<u>10</u>	Filed & Entered: 11/26/2012	☉ Affidavit of Service Other
	Filed & Entered: 10/22/2012	☉ Summons Issued
	Filed & Entered: 07/12/2012	☉ Summons Issued
	Filed & Entered: 07/12/2012	☉ FRCP 4 Service Package - Mailed
<u>3</u>	Filed: 06/22/2012 Entered: 06/28/2012	☉ Amended Complaint
	Filed: 03/05/2012 Entered: 03/07/2012	☉ Case Designated ECF
	Filed: 03/05/2012 Entered: 03/07/2012	☉ Case Designation
	Filed: 03/05/2012 Entered: 03/08/2012	☉ Summons Issued
<u>1</u>	Filed: 03/05/2012 Entered: 03/07/2012	☉ Complaint

PACER Service Center			
Transaction Receipt			
11/27/2012 11:33:48			
PACER Login:	rm7075	Client Code:	
Description:	History/Documents	Search Criteria:	1:12-cv-01577-TPG
Billable Pages:	1	Cost:	0.10

EXHIBIT 2

(2pages total)

EXHIBIT 2 1/2

UNITED STATES DISTRICT COURT
for the
Southern District of New York

David Sellers
Plaintiff

Civil Action No.: 12-CV-1577
JUDGE GRIESA (TPG)

v
The Royal Bank of Canada/RBC Capital Markets;
RBC USA Holdco Corporation,;
Defendant

AMENDED SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff(s) attorney, whose name and address are:

PRO SE DAVID SELLERS
24 EAST PROSPECT STREET
HOPEWELL, NJ 08525

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

RUBY J KRAJICK
CLERK OF COURT

Date: July 11th, 2012



Signature of Clerk or Deputy Clerk

EXHIBIT 2 2/2

UNITED STATES DISTRICT COURT

for the
Southern District of New York

David Sellers
Plaintiff

Civil Action No.: 12-CV-1577
JUDGE GRIESA (TPG)

v

The Royal Bank of Canada; RBC Capital Markets Corp;
RBC USA Holdings Corporation;
Defendant

AMENDED SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

ROYAL BANK OF CANADA
ONE LIBERTY PLAZA
165 BROADWAY
NEW YORK, NEW YORK
A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff(s) attorney, whose name and address are:

PRO SE DAVID SELLERS
24 EAST PROSPECT STREET
HOPEWELL, NJ 08525

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

RUBY J KRAJICK
CLERK OF COURT

V. Jones

Date: October 22nd, 2012

Signature of Clerk or Deputy Clerk

EXHIBIT 3

(2 pages total)

November 5, 2012

Via Overnight Delivery

Mr. Todd W. Schnell

Vice President – Senior Associate General Counsel

RBC Capital Markets

RBC Plaza

60 South Sixth Street

Minneapolis, Minnesota

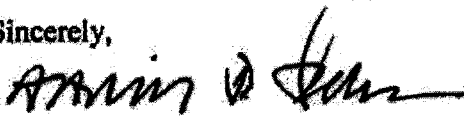
55402-4422

Re: David Sellers v. Royal Bank of Canada, RBC USA Holdco Corporation, RBC Capital Markets Corporation, LLC, et al

Dear Mr. Schnell:

As a courtesy, I am providing you the attached copy of the Amended Complaint (U. S. District Court, Southern District of New York, 12 CIV 1577), which I expect will be served on the above-captioned Defendants early this week.

Sincerely,



David Sellers (*Pro Se*)

24 East Prospect Street

Hopewell, New Jersey

08525

609-466-1354

sellers.david@yahoo.com



Date: 11/27/2012

DAVID SELLERS:

The following is in response to your 11/27/2012 request for delivery information on your Express Mail(R) item number E178 5724 885U S. The delivery record shows that this item was delivered on 11/06/2012 at 10:56 AM in MINNEAPOLIS, MN 55402 to A ANDY HUSCKY. The scanned image of the recipient information is provided below.

Signature of Recipient:

Delivery Section	
Signature	Andy Huscky
Address	

Address of Recipient:

Address	RBC 700 60 S. 6TH ST
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Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

United States Postal Service

EXHIBIT 4

(5 pages total)

November 21, 2012

EXHIBIT 4 1/5
copy
SIGNED AS SENT 2/8

Via Overnight Delivery

United States District Court

Southern District of New York

Daniel Patrick Moynihan United States Courthouse

Pro Se Office

500 Pearl Street, Room 230

New York, New York

10007

Re: 12-CV-1577 (Judge Griesa)

David Sellers v. Royal Bank of Canada, RBC USA Holdco Corporation, RBC Capital Markets Corporation, LLC, and John Does 1-5

Dear Pro Se Office:

Referring to the above-captioned Civil Action, please find enclosed:

1. The original Amended Summons dated October 22, 2012;
2. Affidavit of Service on November 5, 2012, Defendant **ROYAL BANK OF CANADA**;
3. Affidavit of Service on November 5, 2012, Defendant **RBC USA HOLDCO CORPORATION**;
4. Affidavit of Service on November 5, 2012, Defendant **RBC CAPITAL MARKETS CORPORATION, LLC**.

Sincerely,



David Sellers (*Pro Se*)

24 East Prospect Street

Hopewell, New Jersey

08525

609-466-1354 ; 609-468-8437

sellers.david@yahoo.com

Exhibit 4 2/5

U.S. DISTRICT COURT OF THE STATE OF NEW YORK

Job #: 123337

Attorney: David Sellers PH: (908) 488-8437
Address: 24 Prospect Street Hopewell, NJ 08525

3/8

David Sellers

Index Number: 12 CV 1577

vs

Plaintiff

The Royal Bank of Canada et al..

Date Filed:

Client's File No.:

Court Date:

Defendant

STATE OF NEW YORK, COUNTY OF NEW YORK, SS:
Juan Pereira, being sworn says:

AFFIDAVIT OF SERVICE

Deponent is not a party herein; is over the age of 18 years and resides in the State of New York.

On 11/6/2012, at 12:08 PM at: 200 Vesey Street (Legal Department), NY, NY 10281 Deponent served the within Amended Summons and Complaint

On: Royal Bank of Canada, therein named.

☐ #1 INDIVIDUAL

By delivering a true copy of each to said recipient personally; Deponent knew the person so served to be the person described in as said recipient therein.

☐ #2 SUITABLE AGE PERSON

By delivering thereof a true copy of each to ☐ a person of suitable age and discretion. Said premises is recipient's: ☐ actual place of business / employment ☐ dwelling house (usual place of abode) within the state.

☐ #3 AFFIXING TO DOOR

By affixing a true copy of each to the door of said premises which is defendant's ☐ actual place of business / employment ☐ dwelling house (usual place of abode) within the state. Deponent was unable with due diligence to find defendant or person of suitable age and discretion thereof having called there

☒ #4 Corporation or Partnership or Trust or LLC

By delivering thereof a true copy of each to Daniel Decker Paralegal personally. Deponent knew said corporation/partnership/trust/LLC so served to be the corporation/partnership/trust/LLC described in said aforementioned document as said defendant and knew said individual to be an authorized agent of the named entity, thereof.

☐ #5 MAILING

On, deponent enclosed a copy of same in a postpaid envelope properly addressed to defendant at defendant's last known ☐ Actual Place of Residence ☒ Actual Place of Business, and deposited the envelope in an official depository, personally or via agency, under the exclusive care and custody of the U.S. Postal Service within New York State. The envelope bore the legend "personal and confidential" and did not indicate on the outside, thereof by return address or otherwise that the communication was from an attorney or concerned an action against the defendant.

☒ #6 DESCRIPTION

Sex: Female Color of skin: White Color of hair: Black Glasses:
Age: 30-50 Height: 5ft9in-6ft0in Weight: Over 200 lbs Other Features: he wears glasses

☐ #7 MILITARY SERVICE

I asked the person spoken to whether defendant was in active military service of the United States or the State of New York in any capacity whatever and received a negative reply. The source of my information and the grounds of my belief are the conversations and observations above narrated.

☐ #8 WITNESS FEES

Subpoena Fee Tendered in the amount of

☐ #9 OTHER

Sworn to before me on

17th November 2012

[Signature]

FAWZIA SAMSAIR
Notary Public, State of New York
Qualified in Queens County
Reg. No. 01SA5031508
My Commission Expires Aug. 8, 2014

11-17-12

[Signature]
Juan Pereira
0882964

U.S. DISTRICT COURT OF THE STATE OF NEW YORK

EXHIBIT 4 3/5

Job #: 123338

Attorney: David Sellers PH: (609) 468-8437
Address: 24 Prospect Street Hopewell, NJ 08525

5/8

David Sellers

VS

The Royal Bank of Canada et al...

Plaintiff

Defendant

Index Number: 12 CV 1577

Date Filed:

Client's File No.:

Court Date:

STATE OF NEW YORK, COUNTY OF NEW YORK, SS.:
Juan Pereira, being sworn says:

AFFIDAVIT OF SERVICE

Deponent is not a party herein; is over the age of 18 years and resides in the State of New York.

On 11/5/2012, at 12:08 PM at 200 Vesey Street (Legal Department), NY, NY 10281 Deponent served the within Amended Summons and Complaint

On: RBC USA Holdeo Corporation, therein named.

☐ #1 INDIVIDUAL

By delivering a true copy of each to said recipient personally; Deponent knew the person so served to be the person described in as said recipient therein.

☐ #2 SUITABLE AGE PERSON

By delivering theret a true copy of each to () a person of suitable age and discretion. Said premises is recipient's: () actual place of business / employment () dwelling house (usual place of abode) within the state.

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☐ #5 MAILING

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Age: 36-50 Height: 5ft9in-6ft0in Weight: Over 200 lbs Other Features: he wears glasses

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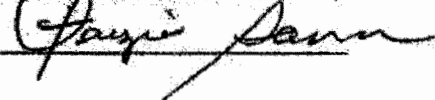
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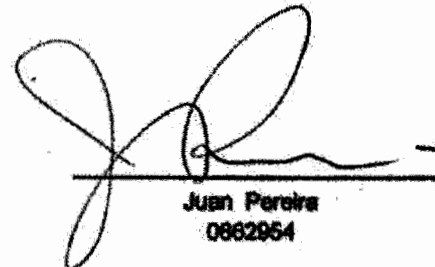
☐ #9 OTHER

Sworn to before me on 17th November 2012



FAWZIA SAMSAIR
Notary Public, State of New York
Qualified in Queens County
Reg. No. 01SA5031508
My Commission Expires Aug. 8, 2014

11-17-12


Juan Pereira
0862954

U.S. DISTRICT COURT OF THE STATE OF NEW YORK

Job #: 123339

Attorney: David Sellers PH: (609) 468-8437
Address: 24 Prospect Street Hopewell, NJ 08525

David Sellers

vs

The Royal Bank of Canada et al.,

Plaintiff

Defendant

Index Number: 12 CV 1577

Date Filed:

Client's File No.:

Court Date:

STATE OF NEW YORK, COUNTY OF NEW YORK, SS:
Juan Pereira, being sworn says:

AFFIDAVIT OF SERVICE

Deponent is not a party herein, is over the age of 18 years and resides in the State of New York.

On 11/5/2012, at 12:08 PM at: 200 Vesey Street (Legal Department), NY, NY 10281 Deponent served the within Amended Summons and Complaint

On: RBC Capital Markets Corporation, therein named.

☐ #1 INDIVIDUAL

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Subpoena Fee Tendered in the amount of

☐ #9 OTHER

Sworn to before me on 17th November, 2012
[Signature]

[Signature]
Juan Pereira
0852954

FAWZIA SAMSAIR
Notary Public, State of New York
Qualified in Queens County
Reg. No. 01SA5031508
My Commission Expires Aug. 8, 2014

11-17-12

EXHIBIT 4 515
1/8

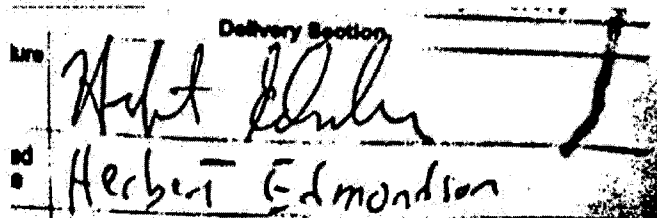


Date: 11/27/2012

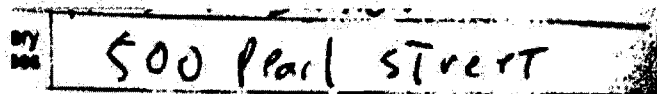
DAVID SELLERS:

The following is in response to your 11/27/2012 request for delivery information on your Express Mail(R) item number E13 0999 257U S. The delivery record shows that this item was delivered on 11/26/2012 at 12:41 PM in NEW YORK, NY 10007 to H EDMONDSON. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

United States Postal Service